

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ZIAD SAID OZRAIL,)	
)	
Plaintiff,)	
)	
)	
v.)	Civil Action No. 2:05-cv-02287
)	
)	
Z BEST OIL CO. INC., HAITHAM A.)	
AL YOUSEF and NASSAR OZRAIL,)	
d/b/a Z BEST MARKET)	
)	
Defendants.)	

**MOTION OF DEFENDANTS, Z BEST OIL CO., INC., HAITHAM A. AL
YOUSEF AND NASSAR OZRAIL d/b/a Z BEST MARKET, TO COMPEL
PRODUCTION OF DOCUMENTS STATED IN THE INITIAL DISCLOSURES
OF ZAID SAID OZRAIL, IN DEFENDANTS' NOTICE TO TAKE DEPOSITION
IN AUDIO-VISUAL FORMAT AND FOR SANCTIONS**

TO: Clerk of Court
United States Court
Western District of Tennessee, Western Division
167 N. Main Street
Memphis, TN 38103

COMES NOW Defendant, Z Best Oil Co., Inc., Haitham A. Al Yousef and Nassar Ozrail d/b/a Z Best Market, by and through counsel, files this, its Motion to compel production of documents in response to Defendants' Notice to Take Oral Deposition in Audio-Visual Format and Plaintiff's Documents described in Plaintiff's Rule 26(a) disclosures, and in support thereof, would show unto the Court as follows:

1. The current discovery deadline in this litigation as regards depositions, interrogatories, and requests for admissions, is April 7, 2006.

2. To date, Plaintiff has not produced a single document, data compilation, or tangible thing in his possession, custody, or control, which might be relevant to the claims or defenses of either party. *See* Initial Disclosures of Zaid Said Ozrail, attached hereto as Exhibit.
3. On March 14th, 2006, Defendants served the Notice to take Deposition in Audio-Visual Format of Plaintiff, to Plaintiff's local counsel. *See* Notice, attached hereto as Exhibit. With the Notice, Defendants served an Exhibit A listing a variety of documents, many of which were named in Plaintiff's Initial Disclosures, for production at Plaintiff's deposition. *See* Exhibit A, attached hereto as Exhibit.
4. The deposition date, stated in the deposition Notice for Plaintiff's deposition, is March 28th, 2006, at 10 a.m.
5. On Wednesday, March 22nd, 2006, Defendants' counsel received Plaintiff's Objection to Subpoena and Notice of Deposition, which stated several objections and which also stated that Plaintiff would not produce "any" documents at the stated deposition. *See* Plaintiff's Objection to Subpoena and Notice of Deposition, attached hereto as Exhibit.
6. On Friday, March 24th, 2006, Defendants' counsel called and emailed Plaintiff's local counsel regarding Plaintiff's stated Objections and the desire of Defendants' counsel to file a Motion to compel production of documents stated in the deposition notice as well as documents described in Plaintiff's Rule 26(f) disclosures. *See* Email from John Hershberger to Jim Newsom, attached hereto as Exhibit.
7. On Friday, March 24th, 2006, Plaintiff's local counsel, returned a telephone call to Defendants' counsel stating the following: that Plaintiff would not be producing any documents at his deposition, that Plaintiff would be moving the Court to amend his Complaint to add other claims, that Plaintiff would be unavailable from April 6th, 2006, for some time, as he would be out of the country. Defendants' counsel stated his desire

to continue with Plaintiff's deposition on the Noticed date, as the discovery deadline in the case is currently on April 7th, 2006. Defendants' counsel also stated his agreement to postponing Plaintiff's deposition if both Parties agreed to join in moving the Court to continue the trial in this case and extend the discovery period, in light of Plaintiff's request for delaying Plaintiff's deposition and Plaintiff's proposition to amend his Complaint.

8. While Plaintiff has listed documents referring to "Plaintiff's use and registration of the mark "Z Market" in the State of Tennessee," "Plaintiff's damages resulting from Defendants' infringement of Plaintiff's mark," "Plaintiff's commercial success and goodwill acquired by Plaintiff resulting from the use of Plaintiff's mark," "Plaintiff's budget, sales, marketing and strategic operating plans," "actual confusion resulting from Defendants' use of the mark 'Z BEST MARKET' and infringement of Plaintiff's mark," and "Plaintiff's prior communications with Defendants" as a part of Plaintiff's Rule 26(a) disclosures, Plaintiff has not produced, either by copying or making available for review, any documents, data compilations, or things, that might be used to support either Parties' claims or defenses, as is required by Fed. R. Civ. P. 26(a)(1). *See* Initial Disclosures of Zaid Said Ozrail, attached hereto as Exhibit.

9. As a result of Plaintiff's delay in production of documents in support of his case, and refusal to produce "any" such documents at his deposition, Defendants' ability to defend their case has been prejudiced and greatly hampered.

10. Additionally, Plaintiff's delay in producing documents named in Plaintiff's Rule 26(f) disclosures, and unsupported objections for producing the said documents at his deposition, when given adequate and reasonable notice of two weeks time, has necessitated the filing of this Motion to Compel Plaintiff's appearance at his deposition with the documents, contemplated by Fed. R. Civ. P. 26(a), that may be used to support the claims or defenses of either Party.

WHEREFORE, premises considered, and for good cause shown, Defendants move this honorable Court for entry of an order compelling Plaintiff to produce the aforementioned documents at his deposition, denying Plaintiff's objections to said discovery documents, and assessing attorney's fees attributed to the drafting of this motion, the associated telephone calls and correspondence with Plaintiff, and the preparation time for Plaintiff's deposition, culminating in 3.9 hours of work at \$225/hr, for a total of \$877.50.

Respectfully submitted,

HERSHBERGER|PRICE, PLLC
239 Adams Avenue
Memphis, Tennessee 38103
Telephone: (901) 525-5524
Facsimile: (901) 525-0290

By: /s John R. Hershberger
John R. Hershberger
(TN Bar No. 21519)

ATTORNEY FOR DEFENDANTS,
Z Best Oil Co., Inc., et al.

CERTIFICATE OF CONSULTATION

I, JOHN R. HERSHBERGER, do hereby certify that I have conferred with opposing counsel on several occasions regarding the subject matter of this motion and was not able to reach an accord.

/s John R. Hershberger

JOHN R. HERSHBERGER, Esq.
TN. Bar No. 21519

CERTIFICATE OF SERVICE

I, JOHN R. HERSHBERGER, do hereby certify that a true and exact copy of the foregoing MOTION was delivered to Plaintiff's counsel,

James R. Newsom III (BPR No. 6683)
Harris Shelton Hanover Walsh PLLC
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Telephone (901) 525-1455
Facsimile (901) 526-4084
Attorneys for Plaintiff

by U.S. Mail, postage prepaid on this the 27th day of March, 2006.

/s John R. Hershberger

JOHN R. HERSHBERGER, Esq.
TN. Bar No. 21519